

STEVEN G. KALAR
Federal Public Defender
19th Floor Federal Building - Box 36106
450 GOLDEN GATE AVENUE
San Francisco, CA 94102
Telephone: (415) 436-7700
Facsimile: (415) 436-7706
Email: Steven_Kalar@fd.org
Counsel for Defendant Feng

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

YAN FENG,

DEFENDANT.

No. CR 16-00378-001 MMC
DEFENDANT'S SENTENCING
MEMORANDUM

Court: Courtroom 7, 19th Floor

Hearing Date: November 30, 2016

Hearing Time: 2:15 PM

INTRODUCTION

A mentally ill man, tortured by voices in his head, lit a door on fire. There is no question that he is competent to have entered a plea to the general intent crime to which he plead guilty -- mental illness is not a defense to general intent federal crimes. His criminal culpability, however, must be viewed in the context of his impairments. Balancing the seriousness of the offense against the unique characteristics of this offender, the appropriate sentence is a term near the high-end of the guideline range: 28 months.

DEF. SENT. MEM.
FENG, CR 16-00378-001 MMC

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

The defense departs from Probation in the proposed recommendation. The appropriate custodial term is 28 months. That term is towards the high end of the 24 to 30 month guideline

1 range. It is, however, sufficient to meet the goals of the Sentencing Reform Act. An additional
2 two months of incarceration is unnecessary to punish a man with no real criminal history, who
3 has completely and fully admitted responsibility for his crime, and who faces the very real
4 danger of additional and serious collateral consequences from this offense. *See PSR* at 4 par. 11
5 (“As a result, there may be concerns for the defendant’s safety should he return to China.”)

6 Notably, Probation has specifically identified Mr. Feng’s mental illness as a potential
7 basis to vary *below* the advisory guideline range. *See PSR* at 12 ¶ 68. While the defense does not
8 seek that variance, that factor is a compelling reason to impose a custodial term of 28 months,
9 slightly below the maximum guideline range.

10 Finally, and most importantly, a custodial term of 28 months is sufficient to protect the
11 community. The parties and Probation agree to conditions of supervised release that include
12 substance abuse and mental health treatment. *See PSR Recommendation* at 1 and 2. Mr. Feng has
13 also agreed to a stay-away provision from the Chinese Consulate, without the prior approval of
14 the Office of Probation. *See id.* at 5. With this supervision and with proper mental health
15 treatment, Mr. Feng will pose no danger to himself or to the community.

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27

28 DEF. SENT. MEM.
FENG, CR 16-00378-001 MMC

1 **CONCLUSION**

2 For the foregoing reasons, this Court should impose a custodial term near the top of the
3 guideline range: twenty-eight months. The Court should also impose the conditions of supervised
4 release urged by the government and Probation, which will ensure that – if he is not deported –
5 Mr. Feng will receive needed mental health counselling.

6
7 Respectfully submitted,

8
9 Dated: November 22, 2016

STEVEN G. KALAR
Federal Public Defender
Northern District of California

10
11
12 /S/
STEVEN G. KALAR
Federal Public Defender
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27